88-1565

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

BERTIE L. LOMAS,

Petitioner,

vs.

NORTHWESTERN LEHIGH SCHOOL DISTRICT, BOARD OF SCHOOL DIRECTORS OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, HARRY E. BURGER, SUPERINTENDENT OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, AND CARL H. BETZ, GENE E. HANDWERK, VERDIE BAILEY, RUSSELL OSWALD, ORRIN H. FINK, GEORGE F. SOUTHWORTH, CARL D. SNYDER, RALPH H. KRESSLEY, FORREST A. WESSNER, JR., KENNETH A. MORTON AND WILLARD A. KISTLER, ALL IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE BOARD OF SCHOOL DIRECTORS OF THE NORTHWESTERN LEHIGH SCHOOL DISTRICT,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BERTIE L. LOMAS
1810 EASTMAN AVENUE
BETHLEHEM, PA 18018

QUESTION PRESENTED FOR REVIEW

Whether the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit erred in holding that the doctrine of collateral estoppel precluded me from litigating my instant federal civil rights claim in federal court by determining, contrary to the law, that I received a full and fair opportunity to litigate my claim in prior state proceedings.

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OFFICIAL REPORTS IN EARLIER PROCEEDINGS

The Opinion of the United States District Court for the Eastern District of Pennsylvania, granting Respondents' Motion to Dismiss, appears in the Appendix to this Petition (Appendix pages A-1 through A-6).

The Opinion of the United States Court of Appeals for the Third Circuit, affirming the Opinion of the District Court, appears in the Appendix to this Petition (Appendix pages B-1 and B-2).

The Opinion of the United States Court of Appeals for the Third Circuit, denying my Petition for Rehearing, appears in the Appendix to this Petition (Appendix pages C-1 and C-2).

JURISDICTION

The decision of the United States Court of Appeals for the Third Circuit was filed November 2, 1983, and a rehearing was denied on November 28, 1983.

This Court has jurisdiction of the appeal under 28 U.S.C. 1254 (1) (1976).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

Section I of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Chapter 28 of the United States Code Section 1254 (1) (1976) provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decrees;
> . . . .

Chapter 28 of the United States Code Section 1343(a) (3), (4) (Supp. V 1982) provides:

> The district courts shall have original jurisdiction of any civil action by law to be commenced by any person:
>
> . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of

> Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Chapter 28 of the United States Code Section 1738, para. 3 (1976) provides:

> [The authenticated Acts of the legislature of any State, Territory, or Possession of the United States and the records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof] shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Chapter 42 of the United States Code Section 1983 (1976) provides:

> Every person, who, under

> color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Chapter 42 of the United States Code Section 1988 (Supp. V 1982) provides:

> . . . . In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

2 Pa. Cons. Stat. Ann., Section 704 (Purdon Supp. 1983) provides:

> The court shall hear the appeal [from a Commonwealth agency] without a jury on the record certified by the Commonwealth agency. . . .

Pa. Stat. Ann. tit. 24, Section 11-1131 (Purdon 1962) provides:

> In case the professional employee considers himself or herself aggrieved by the action of the board of school directors, an appeal by petition, setting forth the grounds for such appeal, may be taken to the Superintendent of Public Instruction at Harrisburg. . . .
>
> . . . .
>
> The Superintendent of Public Instruction shall review the official transcript of the record of the hearing before the board, and may hear and consider such additional testimony as he may deem advisable to enable him to make a proper order. At said hearing the litigants shall have the right to be heard in person or by counsel or both.

> After hearing and argument, and reviewing all the testimony filed or taken before him, the Superintendent of Public Instruction shall enter such order, either affirming or reversing the action of the board of school directors, as to him appears just and proper.
>
> [The Superintendent of Public Instruction is now styled ex officio the Secretary of Education, Pa. Stat. Ann. tit. 71, Section 1039 (b) (Purdon Supp. 1983)]

Pa. Stat. Ann. tit. 24, Section 11-1132 (Purdon Supp. 1983) provides:

> The ruling or decision of the Secretary of Education shall be final unless an appeal is taken in accordance with the provisions of the Act of June 4, 1945 (P. L. 1388, No. 442), known as the "Administrative Agency Law."
>
> [The 1945 Act has been repealed, Act of April 28, 1978, P.L. 202, No. 53 Section 2(a), and been replaced by 2 Pa. Cons. Stat. Ann. Sections 501-508, 701-704 (Purdon Supp. 1983),

Act of April 28, 1978, Section 5, codified at 2 Pa. Cons. Stat. Ann. Section 103(a) (Purdon Supp. 1983).]

Pa. R. App. P. 102 provides:

> Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:
>
> . . . .
>
> "Quasijudicial order." An order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon the record made in whole or in part before the reviewing court.

Pa. R. App. P. 1151(a) provides:

> Review of quasijudicial orders shall be heard by the court on the record. . . .

STATEMENT OF THE CASE

I, Bertie L. Lomas, instituted this federal action in the United States District Court for the Eastern District of Pennsylvania on November 10, 1981 to recover damages under 42 U.S.C. Sections 1983 and 1988 (attorney's fees) for the deprivation of procedural due process rights guaranteed by the Fourteenth Amendment to the Constitution. The district court's jurisdiction was invoked under 28 U.S.C. Section 1343. I contend that the Respondent Board of School Directors of Northwestern Lehigh School District and its members ("School Board") used illegal, arbitrary, and discriminatory procedures to demote me from the position of Elementary School Principal to that of Classroom Teacher. Specifically, I claim that the formal hearings the School Board held to

legitimize my demotion were a sham because the decision to demote had already been made in informal proceedings conducted before the formal hearings and without my knowledge; in fact, punitive action was taken against me before the formal hearings were held -- and even before I had received any notice that my conduct was unsatisfactory. The demotion was punitive in nature, not administrative, since it was based on the perception that I was not performing my professional duties in a satisfactory manner. Consequently, my career has been so stigmatized that I have not been able to secure another position as a school administrator, to my great detriment.

I have not had the opportunity to freely develop and present evidence in support of my procedural due process claim before any tribunal to date. At

the formal hearings before the School Board, my counsel was denied his request to examine the School Board members for the purpose of determining whether any should be disqualified from voting on the demotion due to bias or for any other valid reason. Thus, I was unable to prevent the rights deprivation from happening, and was denied my first (and best) real opportunity to develop evidence of bias and pre-judgment. In addition, the School Board deliberated on the demotion in a private and unrecorded session, over the objection of my counsel. When I appealed the demotion to the Pennsylvania Commonwealth Court, and there raised the instant due process claim, I was also unable to present evidence. No additional evidence relating to the claim was ever taken after the School Board hearings; the

Pennsylvania Commonwealth Court has no authority to take any evidence in a tenured professional employee demotion appeal. Finally, discovery was unavailable for any of these state and local proceedings.

On May 7, 1982, the Commonwealth Court affirmed my demotion with modifications, and held that my procedural due process rights were not infringed by the School Board. All possibilities for further state proceedings were eliminated by September 30, 1982. Therefore, I looked to the district court to vindicate my rights. However, on March 10, 1983, the district court, per Judge Daniel H. Huyett, III, granted a motion for Summary Judgment filed by Respondents and dismissed the action with prejudice, holding that the Commonwealth Court decision precluded consideration of my claim. In a memorandum

opinion filed November 2, 1983, the United States Court of Appeals for the Third Circuit affirmed the district court's decision, and on November 28, 1983, denied a petition for rehearing. I believe that the lower courts have committed a serious legal error in dismissing my action on preclusion grounds because I was denied a full and fair opportunity to litigate my federal claim in the Pennsylvania courts.

In this case the district court has made, and the appeals court has countenanced, a serious departure from the clearly established rules of collateral estoppel -- the doctrine that later courts will follow the judgment of the first court to rule on a given claim. The implications of this departure, as will be demonstrated herein, are as significant as they are hazardous. The lower courts have invoked collateral

estoppel to my detriment, even though I did not have a "full and fair opportunity to litigate" my claim in the first court. As a result, I have been unable to prosecute a claim against the Respondents (School Board) for damages caused by their deprivation of my procedural due process rights. I am not made whole and the School Board and similar entities are not deterred from making future violations.

I raised and argued the due process claim, which arises out of my demotion by the School Board from Elementary School Principal to Classroom Teacher, before the Pennsylvania Commonwealth Court prior to the district court's action, and lost. However, where a party is unable to present evidence freely in a previous forum on behalf of her claim, as in this case, she is not to be

bound by the judgment in later proceedings. This legal principle has been reaffirmed many times by your Honorable Court in the past few years; it applies with equal strength in 42 U.S.C. Section 1983 civil rights cases as it does in other cases, and is completely consistent with the Full Faith and Credit Statute, 28 U.S.C. Section 1738:

> [O]ne general limitation the Court has repeatedly recognized is that the concept of collateral estoppel cannot apply when the party against whom the earlier decision is asserted did not have a "full and fair opportunity" to litigate that issue in the earlier case.

Allen v. McCurry, 449 U.S. 90, 95 (1982) (a section 1983 case which was also characterized by an interplay with the Full Faith and Credit Statute), citing Montana v. United States, 440 U.S. 147,

153 (1979):

> Redetermination of issues is warranted if there is a reason to doubt the quality, extensiveness, or fairness of the procedures followed in the prior litigation.

Kremer v. Chemical Construction Corp., 456 U.S. 461, 481 (1982) (also a Section 1983/Section 1738 case);

> Section 28 U.S.C. Section 1738 generally requires "federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so." Allen v. McCurry, at 96, 101 S.Ct., at 415. In federal actions, including Section 1983 actions, a state-court judgment will not be given collateral estoppel effect, however, where "the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court." Id., at 101, 101 S.Ct., at 418.

Haring v. Prosise, 103 S.Ct. 2368, 2373 (1983). While the law is thus quite clear, the lower courts seem somewhat confused on this point. In fact, the district court completely missed the thrust of the "full and fair opportunity" argument when it confused that argument (that I did not have a full and fair opportunity to litigate my claim in the prior state proceedings which culminated in the decision of the Commonwealth Court) with my substantive claim (that the School Board violated my procedural due process rights by being impartial); both happen to be based on procedural due process, c.f. Kremer, 456 U.S. at 483,n.24.

Not only have the lower courts misunderstood the law, they have also misconstrued the facts of my "full and fair opportunity" argument. The gravamen of my substantive claim is that the School Board, or some of its members, were biased

against me when they made their formal decision to demote me. The claim is not a frivolous one because of the extensive pre-hearing involvement of the School Board, including numerous secret meetings at which various actions were taken against me, before they eventually held their formal hearings and vote. Naturally, these earlier activities cannot in themselves constitute sufficient proof that at the time of the formal vote the School Board was biased. And so, when faced with only this evidence, the Commonwealth Court reasonably applied the presumption of official fairness and impartiality and concluded that the School Board had not violated my procedural due process rights. However, these actions do suggest that a further inquiry into the School Board members' impartiality at the final vote would not be merely vexatious. But I was never

allowed to make such an inquiry. Before the vote was held at the School Board hearings, my counsel requested the opportunity to examine the members for bias, one of the best ways to produce real evidence to decide the matter. The School Board denied the request, and satisfied itself with an admonishment from its Solicitor. Next, my counsel requested that the School Board either conduct its deliberations in public, or record them for future evidentiary use. Request denied. And that is the end of the story because no other evidentiary hearings were ever held in this case before the Commonwealth Court made its decision. Regardless of the district court's vague declaration that "these issues were determined by the Commonwealth Court in a de novo manner," the Commonwealth Court can only make its decision upon the record below. Moreover, in the

state proceedings discovery procedures were totally unavailable to me. Based upon these facts, then, it is quite clear that I had no opportunity to develop any facts at all in support of my plausible due process claim, let alone a "full and fair" one. And it is particularly clear that the district court was in error holding otherwise when it stated that the Commonwealth Court assumed the truth of much of the facts that I wanted to establish on the bias, because if it assumed that members of the School Board were biased, then a fortiori my rights were violated; the Commonwealth Court only assumed the truth of the pre-formal hearing facts described above.

Courts have often tried to add a little more detail to the necessarily vague requirement of a "full and fair opportunity to litigate," and these explications

only make it more certain that my case falls within the exception to collateral estoppel. For example, one formulation examines the "procedural, substantive, and evidentiary" opportunities to be heard on the issue in question. Scooper-Dooper, Inc. v. Kraftco Corp., 494 F.2d 840, 845 (3d Cir. 1974); Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 333 (1971); Oldham v. Pritchett, 599 F. 2d 274, 279 (8th Cir. 1979). Under that examination, the lack of discovery procedures and the restrictions placed on developing a record in the only state evidentiary proceeding held, clearly indicate a violation of the "fullness and fairness" requirement. In addition, this Court has also pointed out the degree to which the "offensive" use of collateral estoppel may increase unfairness

over the usual "defensive" invocation of the doctrine:

> If, for example, the defendant in the first action was forced to defend in an inconvenient forum and therefore was unable to engage in full scale discovery, or call witnesses, applications of offensive collateral estoppel may be unwarranted.... The problem of unfairness is particularly acute in cases of offensive estoppel . . . because the defendant against whom the estoppel is asserted typically will not have chosen the forum in the first action.

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331, n. 15 (1979). While the invocation of collateral estoppel in this case was made by the defendant, and thus may be designated "defensive," the reasoning of the Parklane court makes it clear that the "offensive/defensive" distinction really hinges on the alignment in the first action of the party against whom collateral

estoppel is invoked. If that party was a defendant in the first action, the dangers of unfairness are much greater than if she chose the original forum as a plantiff. (The "offensive/defensive" terminology was employed because in the typical collateral estoppel case the defendant in the first action is also a defendant in the second action). Thus, the instant case falls on the "offensive" use side of the effective distinction in Parklane - because I was a defendant in the state suit. The district court, though, facilely dismissed my claim in part on the grounds that collateral estoppel was being invoked merely "defensively." Yet, as hypothesized in Parklane, I was forced to defend in an inconvenient forum in the state evidentiary proceedings -- and was unable to engage in full scale discovery, call the School Board as witnesses, or otherwise attempt to show

that members of the Board were biased against me at the formal vote. Therefore, the state proceedings on the procedural due process claim raised in my suit were not full and fair, and should not be bound by a decision rendered in a forum not of one's choosing where evidentiary opportunities are inadequate.

I was not afforded a full and fair opportunity to litigate my claim that Respondents denied my procedural due process when they demoted me from Elementary School Principal to Classroom Teacher in previous state proceedings which addressed this issue. Therefore, the district court should not have dismissed my Complaint on preclusion grounds, and the court of appeals should not have affirmed the dismissal.

In their zeal to dispose of a "distasteful" and "uninteresting" official

bias case, the type of case that will usually come out for the School Board, the lower courts have utilized unclear analysis and memorandum opinions with an unfortunate result. By their actions, these courts have set a very dangerous precedent -- they have changed the rebuttable presumption of fairness and impartiality of all public officials hearing disciplinary matters into a conclusive one in cases, such as mine, where the officials themselves decide they are unbiased, and where there are no adequate opportunities for one to prove otherwise.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

In support of my Petition, I offer the following summaries:

1. In affirming the judgment of the District Court, the Court of Appeals for the Third Circuit overlooked the important

distinction between the "offensive" and "defensive" applications of the doctrine of collateral estoppel enunciated by the Supreme Court in Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).

2. In affirming the judgment of the District Court, the Court of Appeals for the Third Circuit misapprehended the fact that my case involves the "offensive", rather than the "defensive", application of collateral estoppel. Collateral estoppel is "offensive" when asserted against the defendant in the first forum, which, in this case, was the Petitioner. It is "defensive" when invoked against the party who chose the forum in the first action. In this case the Respondents, not the Petitioner, chose the first forum. Thus the District Court erred in holding that the application of collateral estoppel in my case was "defensive" in nature, and

the Court of Appeals for the Third Circuit erred in affirming that holding.

3. In affirming the judgment of the District Court, the Court of Appeals for the Third Circuit overlooked its holding in Consolidated Express, Inc. v. New York Shipping Association, Inc., 602 F.2d 494 (3rd Cir. 1979) to the effect that "offensive" collateral estoppel should not be applied against a party as to whom the second action provides procedural opportunities that were unavailable in the first action and are of a kind that might be likely to cause a different result. It is clear from the record that in the state proceedings I never had the evidentiary opportunity to establish the bias which I claim by examining members of the School Board which heard demotion proceedings against me. It is equally clear that fairness demanded that I be given that opportunity because of the pre-hearing

activities of numerous members of the Board. The panel of the Court of Appeals for the Third Circuit which heard the argument of this appeal apparently misapprehended the evidentiary opportunities available to me in the state proceedings, as indicated by its suggestion at argument that I could have instituted a quo warranto action in the state courts to test the bias of the Board Members. Quo warranto is not available for that purpose; it lies to test the propriety of the acts of a public officer only when the acts are such as involve a forfeiture of office.

4. In affirming the judgment of the District Court, the Court of Appeals for the Third Circuit has established a conclusive presumption of the fairness and impartiality of all public officials hearing disciplinary matters within their jurisdiction. If, as in my case, there is no

evidentiary opportunity to rebut the often expressed presumption of fairness and impartiality, that presumption becomes conclusive. Thus, the due process requirement of a fair hearing becomes meaningless.

CONCLUSION

Because of the great discretion invested in local and administrative bodies (such as the Respondent School Board), their pervasiveness in modern governance, their primarily non-judicial and political character, and the great effect their decisions can have on people's entire careers (such as mine), the instant action is a member of an important class of cases for which due process protection is especially critical. Thus, when the lower courts render that protection impotent, as they have in the present case, there are serious and special reasons for your

Honorable Court to intervene. Accordingly, I pray that my Petition for a Writ of Certiorari will be granted.

Respectfully submitted,

Bertie L Lomas

BERTIE L. LOMAS
1810 Eastman Avenue
Bethlehem, PA 18018
(215) 868-1627

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERTIE L. LOMAS, Plaintiff,	)	
v.	)	
NORTHWESTERN LEHIGH SCHOOL DISTRICT, BOARD OF SCHOOL DIRECTORS OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, HARRY E. BURGER, SUPERINTENDENT OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, AND CARL H. BETZ, GENE E. HANDWERK, VERDIE BAILEY, RUSSELL OSWALD, ORRIN H. FINK, GEORGE F. SOUTHWORTH, CARL D. SNYDER, RALPH H. KRESSLEY, FORREST A. WESSNER, JR., KENNETH A. MORTON AND WILLARD A. KISTLER, ALL IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE BOARD OF SCHOOL DIRECTORS OF THE NORTHWESTERN LEHIGH SCHOOL DISTRICT, Defendants.	)	CIVIL ACTION NO. 81-4609

ORDER

NOW, March 9, 1983, upon consideration of defendants' motion for summary judgment, the memoranda of law submitted by the parties and the record before me on this motion, and because:

1. The Federal Judicial Code, at 28 U.S.C Section 1738, requires federal courts to accord the same full faith and credit to state judicial proceedings "as they have by law or usage in the courts of such State . . . from which they are taken." This statute applies to actions under 42 U.S.C. Section 1983. Allen v. McCurry, 449 U.S. 90, 97 (1980).

2. Where the issues presented by the action in federal court are the same that were decided in state court and the plaintiff pursued the state resolution freely and without reservation, the state court will be given preclusive effect by federal courts. New Jersey Education Association v. Burke, 579 F.2d 764, 774 (3d Cir. 1978). See England v. Louisiana State Board of Medical Examiners, 373 U.S. 411 (1964).

3. Plaintiff's claim under the Due Process Clause of the Fourteenth Amendment concededly raises the same issues that were

decided against plaintiff by the Commonwealth Court of Pennsylvania in Lomas v. Board of School Directors of Northwestern Lehigh School District, Pa Cmwlth., 444 A.2d 1319 (1982). It is clear from that court's opinion and the briefs before it that the court did not apply a limited scope of review in deciding these issues such that the issues before that court and this court are conceivably different. See Kremer v. Chemical Construction Corp., _____U.S._____, 102 S. Ct. 1883, 1902-03 (1982) (Blackmun, J. dissenting). Rather, these issues were determined in a de novo manner. See Lomas, supra, 444 A.2d at 1323.

4. Plaintiff's argument that the earlier proceeding did not provide her with a "full and fair opportunity" to litigate these issues is not supported by the facts or the law. See Allen, supra, 449 U.S. at 95, citing Montana v. United States, 440 U.S. 147, 153 (1979).

First, review of the briefs and the opinion in the Commonwealth Court reveals that the court gave great consideration to the kind of evidence that plaintiff now wants to establish. Specifically, the court's reasoning shows that it assumed the truth of much of these facts but found that the hearing nevertheless provided plaintiff with due process of law. We cannot review this decision for error. See Allen, supra, 559 U.S. at 101.

Second, when the "offensive" use of collateral estoppel is being considered, the prior hearing may not have been adequate if it did not offer the full panoply of fact finding procedures that the second forum offers. See Parklane Hosiery Co. v. Shore, 439 U.S. 331, n.15 (1979). However, the "defensive" use of collateral estoppel, as is presented here, should be considered differently. Id. at 329-31.

Moreover, the fact that an administrative agency made the initial decision, subject to judicial review, is not sufficient grounds to declare that the prior hearing was procedurally unfair. See, United States v. Utah Construction & Mining Co., 384 U.S. 394, 442 (1966); Consolidated Express, Inc. v. New York Shipping Ass'n, Inc., 602 F.2d 494, 505 (3d Cir. 1979)., vacated on other grounds, 448 U.S. 901 (1980). To the contrary, "state proceedings need to no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full-faith-and-credit guaranteed by [28 U.S.C. Section 1738]." Kremer, supra, 102 S.Ct. at 1897. Plaintiff argues that the school board hearing violated her rights to due process, not the procedures employed by the Commonwealth Court. Thus, where the state courts would

give preclusive effect to the Commonwealth Court's decision, as here, I must accord this decision the same full faith and credit. Id. Section 1738 "does not allow the federal courts to employ their own rules of res judicata in determining the effect of state court judgments." Id.

IT IS ORDERED that the motion is GRANTED AND THIS ACTION IS DISMISSED WITH PREJUDICE.

S/ Daniel H. Huyett, III
Daniel H. Huyett, III
District Judge

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1224

BERTIE L. LOMAS,

Appellant,

v.

NORTHWESTERN LEHIGH SCHOOL DISTRICT, BOARD OF SCHOOL DIRECTORS OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, HARRY E. BURGER, SUPERINTENDENT OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, AND CARL H. BETZ, GENE E. HANDWERK, VERDIE BAILEY, RUSSELL OSWALD, ORRIN H. FINK, GEORGE F. SOUTHWORTH, CARL D. SNYDER, RALPH H. KRESSLEY, FORREST A. WESSNER, JR., KENNETH A. MORTON AND WILLARD A. KISTLER, ALL IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE BOARD OF SCHOOL DIRECTORS OF THE NORTHWESTERN LEHIGH SCHOOL DISTRICT,

Appellees.

Appeal from the United States District Court for the Eastern District of Pennsylvania. D.C.Civil No. 81-4609
District Judge: Daniel H. Huyett, 3rd

ARGUED NOVEMBER 1, 1983
DECIDED NOVEMBER 2, 1983

Before: ALDISERT, HUNTER and WEIS, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on November 1, 1983.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the District Court entered March 17, 1983 be, and the same is hereby AFFIRMED.

Costs taxed against appellant.

ATTEST:

S/ Sally Mrvos
Sally Mrvos
Clerk
Dated: November 2, 1983

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-1224

BERTIE L. LOMAS,

Appellant,

v.

NORTHWESTERN LEHIGH SCHOOL DISTRICT, BOARD OF SCHOOL DIRECTORS OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, HARRY E. BURGER, SUPERINTENDENT OF NORTHWESTERN LEHIGH SCHOOL DISTRICT, AND CARL H. BETZ, GENE E. HANDWERK, VERDIE BAILEY, RUSSELL OSWALD, ORRIN H. FINK, GEORGE F. SOUTHWORTH, CARL D. SNYDER, RALPH H. KRESSLEY, FORREST A. WESSNER, JR., KENNETH A. MORTON AND WILLARD A. KISTLER, ALL IN THEIR OFFICIAL CAPACITY AS MEMBERS OF THE BOARD OF SCHOOL DIRECTORS OF THE NORTHWESTERN LEHIGH SCHOOL DISTRICT,

Appellees.

(E. D. Pa. Civil No. 81-4609)

SUR PETITION FOR REHEARING

Present: SEITZ, Chief Judge, and ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER and BECKER, Circuit Judges.

ORDER

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

BY THE COURT,

S/ ALDISERT
ALDISERT
Circuit Judge

DATED: NOVEMBER 28, 1983